



**DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
720 KENNON STREET SE RM 214
WASHINGTON NAVY YARD DC 20374-8012**

April 9, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Kenneth N. Whitmore
Lynne H. Whitmore
422 West Fairbanks Avenue
Winter Park, FL 32789-5079**

**SUBJECT: ACQUISITION & ADMINISTRATION, INC. NAME CHANGED TO
WINDSOR CONTINENTAL CORPORATION**

Dear Mr. and Mrs. Whitmore:

By memorandum, dated March 27, 2009, the Department of Navy (DON) Suspending and Debarring Official notified you that your company, Acquisition & Administration, Inc., among others, was proposed for debarment as an affiliate to your company, Coalescent Technologies Corporation. Subsequent to that date, the DON Acquisition Integrity Office learned that Acquisition & Administration, Inc.'s name had been changed to Windsor Continental Corporation in 2007. Based on this information, Windsor Continental Corporation has been added to the Extended Parties List System as being proposed for debarment.

Sincerely,

A large black rectangular redaction box covers the signature of the official.

Suspending and Debarring Official



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
720 KENNON STREET SE RM 214
WASHINGTON NAVY YARD DC 20374-5012

MAR 27 2009

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Kenneth Whitmore, President
Coalescent Technologies, Corporation
422 West Fairbanks Avenue
Winter Park, FL 32789-5079

SUBJECT: PROPOSED DEBARMENT OF COALESCENT TECHNOLOGIES CORPORATION, EBEX Engineering, FMS ASSOCIATES, INC., ACQUISITION & ADMINISTRATION, INC., ADTI LC, The RIMOW CORP., KENNETH WHITMORE, LYNNE H. WHITMORE, ROBERT GODBER, BARBARA WHITMORE, KEITH RUSSELL AND DANIEL FINLEY

Dear Mr. Whitmore:

On behalf of the Department of the Navy, I am initiating debarment action against you and your companies: Coalescent Technologies, Corporation, EBEX Engineering, FMS Associates, Inc., Acquisition & Administration, Inc., The RIMOW Corp., and ADTI LC, effective as of the date of this letter. Based upon my review of the entire Administrative Record, which includes the enclosed "Memorandum for the Department of the Navy Suspending and Debaring Official," I find the facts to be as stated in the enclosed Memorandum, and I further find that the facts support causes to debar you. The causes and reasons for proposing debarment are also stated in the Memorandum, which I adopt and incorporate herein by reference.

Subpart 9.4 of the Federal Acquisition Regulation (FAR), as supplemented by Subpart 209.4 and Appendix H of the Department of Defense FAR Supplement (DFARS) state the procedures governing debarment. Copies of these regulations are enclosed with and made a part of this notice to you.

The immediate effect of debarment is that your name will be published in the Excluded Parties List System ("the List"). The List is a publication of the General Services Administration that contains the names of contractors debarred, suspended, proposed for debarment, or declared ineligible by any agency of the Federal Government. You may access the List on the Internet at <http://www.epls.gov>.

As provided at 9.405, and at 32 Code of Federal Regulations Part 25, the effects of being placed on the List are:

(1) Throughout the Executive Branch of the Federal Government, offers will not be solicited from, contracts will not be awarded to, and existing contracts will not be renewed or otherwise extended for you, unless the head of the agency taking the contracting action or a designee states in writing the compelling reason to do so.

(2) No Government contractor may award a subcontract equal to, or in excess of, \$25,000 to you unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).

(3) If you are proposed as a subcontractor for any subcontract subject to Government consent, no contracting officer of any Federal Executive Branch Agency shall give consent unless the acquiring agency's head states in writing the compelling reasons for this approval action.

(4) You are excluded from conducting business with the Government as an agent or representative of other contractors.

(5) You are also excluded from participating in Federal Nonprocurement activities such as programs and activities involving Federal financial and non-financial assistance and benefits.

(6) You are excluded from acting as an individual surety.

Within 30 calendar days after receipt of this notice, you or a representative on your behalf may submit, either in person or in writing, or both, information and argument in opposition to the proposed debarment, in accordance with FAR 9.406-3(c)(4), and the standard procedures enclosed with this notice. Any written submission of Matters in Opposition should be forwarded in duplicate and addressed to:

[REDACTED]
Acquisition Integrity Office
Office of the General Counsel
720 Kennon Street SE, Room 214
Washington Navy Yard DC 20374-5012

You may contact [REDACTED] directly by telephone at [REDACTED]

If debarment is imposed, your name will be placed on the List as being debarred. Debarment shall remain in effect for a period commensurate with the seriousness of the causes as determined on the basis of the Administrative Record, which will include any information and argument you choose to submit.

Sincerely,

A handwritten signature in black ink, appearing to be a stylized 'S' or 'J' followed by a horizontal line.

[REDACTED]
Suspending and Debarring Official
Department of the Navy

Date: 3/27/27

Enclosures



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
720 KENNON STREET SE RM 214
WASHINGTON NAVY YARD DC 20374-5012

MAR 27 2009

MEMORANDUM FOR THE DEPARTMENT OF THE NAVY SUSPENDING AND
DEBARRING OFFICIAL

SUBJECT: PROPOSED DEBARMENT OF COALESCENT TECHNOLOGIES
CORPORATION, EBEX Engineering, FMS ASSOCIATES, INC., ACQUISITION &
ADMINISTRATION, INC., ADTI LC, The RIMOW CORP., KENNETH WHITMORE,
LYNNE H. WHITMORE, ROBERT GODBER, BARBARA WHITMORE, KEITH RUSSELL
AND DANIEL FINLEY

BACKGROUND:

Between 2006 and 2007, the Defense Contract Audit Agency (DCAA) performed three (3) audits at Coalescent Technologies Corporation (Coalescent or CTC). It conducted the first audit to determine whether CTC's accounting system was adequate for accumulating costs under Government contracts and whether its billing procedures were adequate for preparation of cost reimbursement claims. DCAA reported in Audit Report No. 1461-2006F17740012 (Audit Report No. 0012), dated September 6, 2006, that CTC's accounting system and billing procedures were inadequate for their respective purposes. DCAA performed a second audit to determine whether CTC's financial resources were adequate for performing on Government contracts in the current and near-term (up to one year). Audit Report No. 1461-2006F1700009 (Audit Report No. 0009), dated September 25, 2006, reported that DCAA was unable to make a determination regarding the adequacy of CTC's financial resources because CTC failed to provide reliable financial statements and other required documentation. Notwithstanding, DCAA discovered multiple business dealings between CTC and its affiliates/subsidiaries for which it billed the Government charges in violation of the FAR. DCAA conducted a third audit of CTC's accounting system to determine allowable direct and indirect costs and to establish indirect cost rates for calendar year (CY) 2003. The results were provided in Audit Report No. 1461-2003F10100015 (Audit Report No. 0015), dated July 25, 2007. In it, DCAA questioned CTC's claimed direct subcontract costs in the amount of \$7,967,155 and indirect costs in the amount of \$1,505,500 for a total of \$9,472,655. CTC failed to provide satisfactory answers to DCAA for these questioned costs.

INFORMATION IN THE RECORD:

According to its website, CTC is an engineering firm that provides sophisticated

engineering products and services to Government and private sector customers. It is a privately owned and operated company with headquarters in Winter Park (a suburb of Orlando), Florida. It has division offices in the Washington, D.C. metro area; and regional offices in Maryland, Virginia, Georgia, and Pennsylvania. Kenneth N. Whitmore is the owner and President of CTC. The company was originally located at 731 North Garland in Orlando, FL 32801. It relocated to 422 West Fairbanks Avenue in Winter Park, FL. In Fiscal Year (FY) 2007, the Government awarded over \$80M to the company.

According to DCAA, in CY 2003 the Government was CTC's only customer. Its sales reached approximately \$29.7 million. By CY 2005, CTC sales were \$42,086,681 and eleven (11) percent of that was in Government sales. During the same period, CTC had approximately fifty-four employees.

In 2006, [REDACTED] was lead auditor for the DCAA audit team that conducted the Financial Capability Audits at CTC's headquarters. DCAA examined CTC's accounting system as of July 19, 2006, to determine whether it was adequate for accumulating costs under Government contracts and whether the billing procedures were adequate for the preparation of cost reimbursement claims, i.e., interim public vouchers and progress payments. DCAA determined CTC's accounting system was inadequate and reported its findings in Audit Report No. 0012. While conducting the audit, DCAA discovered that CTC's accounts payable contained incorrect, outdated, and un-invoiced vendor data. For example, as part of the audit examination procedures, [REDACTED] sent twenty (20) confirmation letters to randomly selected Coalescent vendors to confirm information contained in invoices listed in Coalescent's accounts payable. As shown below, several vendors responded that the invoices were incorrect or did not exist.

- Metoccean Data Systems, Ltd.'s entire estimated amount (\$600,000+) was billed to the Government although the vendor had not invoiced \$257,586 of the amount after 2 years;
- Honeywell advised "Honeywell Laboratories ha[d] no open balances with Coalescent — the invoice # referenced is not our invoice;"
 - iO Technologies, Inc., (\$41,745.73) - Vendor advised "no effort ha[d] been expended against the statement of work and no invoice ha[d] been placed against the Coalescent Technologies Corporation Purchase order 01-1 1O5FL, dated June 20, 2001. Thus, there is no balance owed to iO Technologies;" and
 - VBS Store (\$199,650) and VBS 1 Core Store (\$84,400) contained amounts that should have been [recorded as] revenues instead of payables.

Thus, CTC mischarged the Government for services it had not received or been invoiced. Moreover, DCAA found that CTC charged the Government for consultant costs that violated Federal Acquisition Regulation (FAR) 31.205-33 – "Professional and consultant service costs." DCAA found that CTC associates were working on Government contracts as employees or consultants of CTC affiliates/subsidiaries. The subsidiaries are Acquisition and Administration, Inc. (AAI), EBEX Engineering, Inc. (EBEX), and FMS Associates, Inc. (FMS). CTC owners and/or officers supposedly performed "decision-making process [services] relative to proposals

and contracts and [ironically] ensured compliance with FAR and CAS [Cost Accounting Standards] issues.”

FAR 31.205-33(a) defines allowable costs for professional and consulting services as “...those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor.” This subsection of the FAR also requires giving consideration to “[t]he necessity of contracting for the service, considering the contractor’s capability in the particular area” [FAR 31.205-33 (d) (2)]¹; and “[w]hether the service can be performed more economically by employment rather than contracting.” [FAR 31.205-33 (d) (6)].² DCAA opined that in each instance where a CTC associate worked as an employee for one of the subsidiary companies, the services could have been rendered more economically in-house using CTC’s own capability. For these reasons, DCAA determined that the consultant charges for AAI, EBEX, and FMS were not allowable.

CTC’s Chief Financial Officer (CFO) and Controller, Robert Godber, advised DCAA that each of the companies were “affiliated through common management” and the contacts provided in the consultant agreements were no longer actively involved in the company. (However, DCAA noted that CTC owners/associates had not changed since its inception.) Subsequent to completion of the Audit Report No. 0012, Mr. Godber submitted a letter on behalf of CTC that took the position that the Government received a benefit from the business relationship between CTC and its affiliates. DCAA was not persuaded.

Business Transactions between CTC and Several of its Affiliates

DCAA noted in Audit Reports No. 0012 and 0009 that CTC’s consultants were all associates of CTC. Both audit reports stated that the companies were so co-mingled that DCAA could not make a clear distinction between them. Mr. Godber, Vice President, Chief Financial Officer (CFO), and Controller for CTC, said he prepared all the books, records, billings, taxes, etc., for CTC and its four affiliated companies in his office at CTC. Essentially, Mr. Godber explained to DCAA how CTC and associates developed a scheme in which it created shell companies for the purpose of adding layers of unnecessary and unallowable costs to its Government contracts. He advised DCAA that the companies were affiliated through common management as summarized below:

- Coalescent Technologies Corporation (CTC) was the primary contractor that DCAA was auditing. Kenneth Whitmore is the owner. After checking Florida Corporation records, DCAA found that on September 16, 2005, CTC’s [corporate status] was revoked for failure to file an annual report. It was reinstated on January 24, 2006.

¹ The Audit Reports contain a typo, they cite to FAR 31.205-33 (b) (2) instead of FAR 31.205-33(d) (2).

² The Audit Reports contain a typo, they cite to FAR 31.205-33 (b) (6) instead of FAR 31.205-33(d) (6).

The Officer/Director positions listed Mr. Whitmore as the President, Director, and Secretary. Mr. Godber was listed as Vice President and Registered Agent. Daniel Finley was also listed as a Vice President for CTC.

- EBEX Engineering [EBEX]. - Mr. Godber informed DCAA that EBEX is a CTC affiliate that provides consultant services for CTC. He stated EBEX had only one employee (Mr. Whitmore) and it consulted with only one contractor, CTC. Mr. Godber further advised that EBEX's owner, Keith Russell, was not actively involved in the company. He stated that EBEX was incorporated in Florida. DCAA found that EBEX was in an inactive status and had been administratively dissolved by the State of Florida on September 21, 2001, for failure to file an annual report. The only name listed in the Florida records was Kenneth Whitmore.
- FMS Associates, Inc. [FMS]. - is also a CTC affiliate that provides consultant services for CTC. Like EBEX, FMS had only one employee (Mr. Whitmore) and it consulted only with one contractor, CTC. FMS was also incorporated in Florida and had been administratively dissolved on September 21, 2001 by the State of Florida for failure to file an annual report. The only name listed in the Florida records was Kenneth Whitmore.
- Acquisition & Administration, Inc. (AAI) is another consultant. Like EBEX and FMS, AAI had only one employee and consulted with only one contractor, CTC. Except in this instance Lynne Hobcroft (Whitmore), wife of Kenneth Whitmore, was the employee named in the consultant agreement. Like the other affiliates, AAI was incorporated in Florida and had been administratively dissolved on September 21, 2001 by the State of Florida for failure to file an annual report. The only name listed in the Florida Corporation records was Lynne Whitmore.
- ADTI LC (ADTI) is the company that owns the building CTC is located and leases office space and equipment to CTC. ADTI is owned by Mr. and Mrs. Whitmore. According to Florida Corporation records ADTI and CTC used the same address and ADTI was reinstated from inactive status on May 19, 2006. Kenneth Whitmore and Lynne Whitmore are the only names shown on the corporation records for ADTI.
- The RIMOW Corporation (RIMOW) leased tangible property to CTC. Mr. Whitmore is RIMOW's owner. Like ADTI, RIMOW shared CTC's address. It was incorporated in Florida. Mr. Godber was listed as the Registered Agent and Barbara Whitmore was listed as its Director. The records also showed that RIMOW had been administratively dissolved by the State of Florida on September 16, 2005, for failure to file an annual report.

DCAA determined that the total amount billed to CTC by the related parties is \$3,234,566 and it opined there may be other amounts billed to CTC by the related parties

after April 2006 as well as additional amounts billed to CTC prior to the dates shown below. CTC provided the following data to DCAA:

- o \$2,282,720 — Consultants - 2003 to 2006
- o 692,815—ADTI - 1/2005 through 04/2006
- o 259,031 —RIMOW - 4/2004 through 3/2006
- o \$3,234,566 — Total CTC provided amounts

In addition to determining these costs as unallowable, DCAA expressed a major concern with respect to the related parties and their ability to readily influence CTC.

Audit Report No. 0009 provided the results of DCAA's examination of CTC's financial condition and capability. The examination was for the purpose of determining whether CTC had adequate financial resources to perform on Government contracts in the current and near-term (up to one year). The audit included an examination of *unaudited* financial statements for the years ended December 31, 2003 through 2005 and the partial period ending March 31, 2006. (The financial statements were not compiled or examined by an external accountant, but were prepared by CTC personnel, i.e., Mr. Godber). CTC did not provide reliable financial statements for the year(s) ended December 31, 2003, or subsequent periods. DCAA requested, but never received, written confirmation from CTC on whether the financial statements provided during this audit included the disclosure of the maximum liability of off-balance sheet arrangements and related party transactions. Moreover, CTC's financial statements contained multiple errors and omissions and lacked written confirmation of off-balance sheet liability as well as a cash flow projection. Due to these material deficiencies, DCAA could not express an opinion regarding the adequacy of CTC's financial resources for performing Government contracts in the current and near-term (up to one year).

In Audit Report No. 0015, DCAA examined CTC's revised April 24, 2006 final indirect cost proposal and related books and records for reimbursement of FY 2003 incurred costs. The purpose of the examination was to determine allowability of CTC's claimed direct and indirect costs and to establish audit-determined indirect cost rates for CY 2003. DCAA questioned indirect costs of \$1,505,500 and direct subcontract costs of \$7,967,155 for a total of \$9,472,655.

DCAA questioned \$7,967,155 of the contractor's claimed direct subcontract costs because CTC billed and was paid by the Government for subcontract costs that were neither incurred nor invoiced by the respective subcontractors during FY 2003. In accordance with the FAR and generally accepted accounting practices, accounts payable should not be established until the work is performed and appropriate invoices are received from the subcontractor.

DCAA selected CTC leases to review for allowability and reasonableness. The auditors reconciled all costs to CTC's general ledger. Based on numerous discussions with CTC, DCAA discovered CTC was leasing equipment and facilities from its own subsidiaries. In light of that discovery, DCAA questioned \$435,326 of CTC's claimed headquarters overhead lease expenses

under FAR 31.205-36 – “Rental Cost.” Of the questioned amount, \$116,830 was for leased equipment; \$24,367 was for equipment repairs and maintenance; \$56,242 was for furniture lease; and \$237,887 was for rent. DCAA determined these were expressly unallowable building and equipment lease costs in excess of cost of ownership from related parties. Therefore, the questioned costs (\$435,325) were subject to penalty under FAR 42.709 and DFARS 231.7002. Also, because a portion of the facility costs are also allocated to various other indirect cost pools, DCAA also questioned portions of the overhead allocations related to leases under its review of the Bid & Proposal, G&A, and Material Handling expense pools, and made a corresponding adjustment of \$131,463 to the Overhead Allocation amount.

ANALYSIS:

The Federal Acquisition Regulation (FAR) provides, in pertinent part, that “[a] gencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. FAR 9.402(a). The FAR further provides that “[d]ebarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.” *Id.* The FAR also mandates that in order to “be determined responsible, a prospective contractor must ... [h]ave a satisfactory performance record.” FAR 9.104-1(c). In addition, it mandates a “satisfactory record of integrity and business ethics” to be determined responsible. FAR 9.104-1(d).

To effectuate the policies, the FAR authorizes debarment of a contractor for any of the causes stated in the FAR at Subpart 9.406-2. That regulation provides, in pertinent part, that the debarment official may debar a contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor. [FAR Subpart 9.406-2(c).]

The Administrative Record provides information that establishes by a preponderance of the evidence CTC’s business practices are a cause of so serious or compelling a nature that it affects the present responsibility of the CTC, its subcontractors, owners, officers, and employees; and thus, supports debarment under FAR Subpart 9.406-2(c). The information it contains shows that on three occasions over a two year period, DCAA audited CTC’s accounting system and billing procedures. DCAA twice determined that the accounting system and billing practices were inadequate for properly tracking costs on Government contracts. While conducting a third audit, DCAA was unable to render an opinion because CTC failed to provide reliable financial statements and other required documentation.

During the audit examinations, DCAA discovered multiple questionable business practices by CTC that included:

- (1) Mischarging the Government for services it had not received or been invoiced;
- (2) Submitting invoices to the Government for payment knowing that they contained false or inaccurate information; and
- (3) With the aid of its officers, employees, and affiliates, developing a scheme in

which it created shell companies for the purpose of adding layers of unnecessary and unallowable costs to its Government contracts. These shell companies (most of which had been administratively dissolved by the State of Florida for failure to comply with state corporate laws) gave the appearance of outside vendors providing consultant services to CTC under subcontracts. These shell companies had only one employee (Mr. or Ms. Whitmore) and they contracted only with CTC. Based on its review, DCAA opined that none of the services Mr. and Ms. Whitmore provided as CTC's affiliates were cost-effective. They were simply a means of passing costs to Government contracts.


The FAR also provides for imputation of the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor if the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. FAR 9.406-5(a).

CONCLUSION:

CTC's business practices are causes, collectively and/or individually, serious enough to warrant debarment because they are based upon the willingness of Coalescent Technologies Corporation, EBEX Engineering, FMS Associates, Inc., Acquisition & Administration, Inc., ADTI LC, Kenneth Whitmore, Lynne H. Whitmore, Robert Godber, Barbara Whitmore, Keith Russell and Daniel Finley to engage in unethical and dishonest business practices in connection with performing contracts or subcontracts with the Department of the Navy and other government agencies.

RECOMMENDATION:

That you sign the enclosed letters notifying Coalescent Technologies Corporation, EBEX Engineering, FMS Associates, Inc., Acquisition & Administration, Inc., ADTI LC, Kenneth Whitmore, Lynne H. Whitmore, Robert Godber, Barbara Whitmore, Keith Russell and Daniel Finley that the Department of the Navy is placing their names on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" as being proposed for debarment.


Associate Counsel
Acquisition Integrity Office
Office of the General Counsel